

BOARD OF ZONING APPEALS
MINUTES
April 26, 2005

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on April 26, 2005, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:
DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM,
and JOHN ROGERS.

The following Board members were absent:
RANDY PHILLIPS, JAMES RUANE, and JAMES SKELTON.

SHARON DICKGRAFE – Law Department present.
HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:
SCOTT KNEBEL, Secretary.
LISA ESTRADA, Recording Secretary.
DALE MILLER, Current Plans Manager

ROGERS Calls meeting to order.

Item 1

FOSTER moved MARKHAM seconded to approve March 22, 2005 meeting minutes.

MOTION CARRIES 4-0.

Item 2

SCOTT KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY'S REPORT

CASE NUMBER:	BZA2005-00012
APPLICANT/AGENT:	Fouts Geller Development Company LLC c/o Jim Fouts (Owner/Applicant); Baughman Company, PA c/o Phil Meyer (Agent)
REQUEST:	Variances to reduce the parking requirement for a neighborhood swimming pool from 19 spaces to 9 spaces and to permit the parking area within the front setback
CURRENT ZONING:	“SF-5” Single Family
SITE SIZE:	0.95 acres

LOCATION: South of 29th Street North and east of Tyler Road (2918 N. Pepper Ridge)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant proposes to construct a neighborhood swimming pool for a single-family residential development located south of 29th Street North and east of Tyler Road (see attached site plan). The swimming pool is proposed to be 875.8 square feet in area, and a 1,012.5 square-foot club house also is proposed. Section of IV-A.4. of the Unified Zoning Code (UZC) requires that neighborhood swimming pools provide one parking space for each 100 feet of pool and clubhouse area. For the subject property, the UZC requires that 19 parking spaces be provided; however, the applicant proposes to provide only nine parking spaces. A variance is required to reduce the parking requirement for the proposed neighborhood swimming pool by more than 10 percent. The applicant also proposes that a portion of the parking area be located within the front setback; however, Section IV-6. requires that the parking area be located outside the front setback area. The parking area may be permitted within the front setback by administrative adjustment, but it also may be permitted by granting a variance, which the applicant has requested in order to save time on the project. The applicant has submitted the attached written statement to justify the requested variances.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Open space reserve
SOUTH	“SF-5” Single-family residential lot
EAST	“SF-5” Single-family residential lot
WEST	“SF-5” Single-family residential lot

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the neighborhood swimming pool and associated clubhouse are larger than typically would be located within a residential development of the size that it will serve. Therefore, the residences served by the pool will be located closer to the pool than usual, and users of the pool will be more likely walk to the pool than drive, thus supporting the proposed parking area.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the users of the pool are the owners of the adjacent property who desire the pool as a neighborhood amenity. Additionally, sufficient on-street spaces are available for occasional overflow parking situations, and the nearest on-street spaces are located beside and not in front of nearby residential lots.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the strict compliance with the parking regulations would entail significant expense for a neighborhood amenity to provide parking spaces that are unnecessary.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in preserving common open space within neighborhoods instead of paving areas for parking spaces that are unnecessary.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve parking requirements are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces since the neighborhood swimming pool serves a smaller than typical area, thus resulting in a greater number of people walking to the pool than typical.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that variances to reduce the parking requirement for a neighborhood swimming pool from 19 spaces to 9 spaces and to permit the parking area within the front setback be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year from the date the variance is granted unless such time is extended by the Board.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

MARKHAM What did you say was in that open space.

KNEBEL It is a drainage pond.

MARKHAM Explain that to me.

KNEBEL It collects the water from the remaining subdivision. It holds it back and releases it at the undeveloped rate so it does not flood the surrounding properties.

MARKHAM So, nothing is going to be built in front of that area?

KNEBEL North of it, that is correct. It will need to remain the drainage pond.

FOSTER Scott, is this a Planned Unit Development?

KNEBEL No, it is not. It is zoned Single-family.

FOSTER Was this a reserve area that was designated for recreation?

KNEBEL It is a reserve area that is in the process of being designated for recreation. There is a separate vacation application.

FOSTER So it was originally a house lot?

KNEBEL No, it was originally an open space reserve, with no language designating it for recreation, so they are making that change.

FOSTER What about the area to the east, is that useable land?

KNEBEL Immediately east, in this location, they could construct parking there. The reason they are requesting the variance is because they feel like the parking is unnecessary.

FOSTER It is not a question of not having enough land to park on? It is a question of not needing it?

KNEBEL That is correct.

FOSTER Are there houses to the west of this?

KNEBEL Yes, there will be. Immediately across the street are two residential lots.

FOSTER Those houses will probably face on that cul-de-sac, so there is plenty of room on the street?

KNEBEL It is unlikely that any of the surrounding on street parking is going to be in front of a residence. It is most like going to be beside it.

RUSS EWY, BAUGHMAN COMPANY, 315 ELLIS, WICHITA, KS The balance of the reserve will be for a drainage pond. The application area does contain that small area off to the east which is designated for open space. The developer is working with the homeowners association to try and determine if there is an interest in some small play area. It is an unnecessary need for that amount of parking that is required for this type of facility. The second issue is the language in the reserve, as it was platted a few years ago. That application to vacate that language and establish recreation use as a permitted use within Reserve E has already been through and approved by the Subdivision Committee as well as the Planning Commission and is awaiting City Council approval.

MARKHAM The area where they anticipate a small play area, this would become a common area whereby the community would share the upkeep and the maintenance of this?

EWY That is correct. The entire reserve system within this plat, as well as most plats, will fall ultimately unto the homeowners association for responsibility, including the upkeep and maintenance of this park facility here. As it stands now, I am not sure development has occurred enough, usually there is a tipping over point where 51% of the lots are sold then the

responsibility moves from the developer to the homeowners association. I can't answer whether that has happened at this point. I would doubt it though.

FOSTER moved GREENLEE seconded, That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report.

ROGERS Before we take this vote I would like to ask Legal staff if we have to have a all four members vote in favor of this for this motion to pass.

DICKGRAFE Yes, that is correct.

MOTION carries 4-0.

Item 3

SCOTT KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY'S REPORT

CASE NUMBER: BZA2005-00013

OWNER/APPLICANT: Integrated Healthcare Systems, Inc. c/o Gary Bue

AGENT: Luminous Neon, Inc. c/o Judy Manka

REQUEST:

1. Variance to Section 24.04.193.1. of the Sign Code to increase the maximum area of a ground sign from 32 square feet to 78 square feet; and
2. Variance to Section 24.04.193.1. of the Sign Code to increase the maximum number of permitted ground signs from one to five; and
3. Variance to Section 24.04.193.3. of the Sign Code to allow individual building signs larger than 32 square feet in area and to increase the total maximum area of building signs from 32 square feet to 334 square feet; and
4. Variance to Section 24.04.193.3. of the Sign Code to increase the maximum height of building signs from 30 feet to 40 feet.

CURRENT ZONING: "GO" General Office

SITE SIZE: 32.7 acres

LOCATION: South of 21st Street North and east of K-96 (1947 Founders Circle)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is developing a large medical clinic on over 32 acres zoned “GO” General Office and located south of 21st Street North and east of K-96 at 1947 Founders Circle. Since only a single business will be located on the subject property, the Sign Code permits one 100 square-foot ground sign along 21st Street, one 32 square-foot ground sign along Founders Circle, building signs on each building elevation with no sign larger than 32 square feet in area and 30 feet in height with the total area of all building signs not exceeding 32 square feet, and an unlimited number of directional signs not exceeding six square feet in area each. However, the applicant is proposing one 100 square-foot ground sign along 21st Street, one 78 square-foot ground along Founders Circle, four 22.67 square-foot ground signs along Founders Circle, two 66.32 square-foot building signs at 40 feet in height, one 201.33 square-foot building sign at 40 feet in height, and five directional signs not exceeding square feet in area each (see attached site plan and elevation drawings).

Were the subject property to be developed multiple businesses instead of a single business all of the proposed signage could be permitted by right except for the size and height of building signs proposed. Additionally, were the property developed with multiple businesses, significantly larger and taller signs than proposed could be permitted by right, including multiple ground signs along K-96. Therefore, the applicant has requested four variances of the Sign Code to provide for a tailored sign package for a single large tenant on the subject property while maintaining the spirit and intent of the sign regulations (see attached written justification). The four variances requested are:

1. Variance to Section 24.04.193.1. of the Sign Code to increase the maximum area of a ground sign from 32 square feet to 78 square feet; and
2. Variance to Section 24.04.193.1. of the Sign Code to increase the maximum number of permitted ground signs from one to five; and
3. Variance to Section 24.04.193.3. of the Sign Code to allow individual building signs larger than 32 square feet in area and to increase the total maximum area of building signs from 32 square feet to 334 square feet; and
4. Variance to Section 24.04.193.3. of the Sign Code to increase the maximum height of building signs from 30 feet to 40 feet.

ADJACENT ZONING AND LAND USE:

NORTH	“LC”	Shopping center
SOUTH	“SF-5”	Cemetery
EAST	“SF-5”	School, single family residence
WEST	“SF-5”	Undeveloped

The five criteria necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the proposed signage is for one business providing a variety of services within a large medical clinic. Typically, a such a large building would house numerous businesses, and each business would be

allowed separate signage with the likely impact of the signage exceeding the impact of the signage proposed by the applicant.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the overwhelming majority of the developed properties that will have a direct view of the signage are developed with non-residential uses and the overwhelming majority of the proposed signage is significantly set back from existing residential uses.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the Sign Code would permit signage in excess of the amount requested by the applicant were the property occupied by multiple businesses rather than a single medical clinic. Additionally, the subject property is located along an elevated freeway and without the proposed size and height of building signs, the traveling public would have difficulty locating the appropriate exit from the freeway for the business.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale in relation to the size of the property and proposed business, and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier to locate the facility and the services provided within the facility while balancing these identification needs with the needs for high-quality community aesthetics.

RECOMMENDATION: It is staff's opinion that the proposed signage is appropriate. Should the Board determine that conditions necessary to the granting of the variances exist, then it is the recommendation of the Secretary that the variances to increase the size and number of ground signs and to increase size and height building signs be GRANTED, subject to the following conditions:

1. All signage on the subject property shall conform to the requirements of the Sign Code except that variances are granted to permit one ground sign along Founders Circle with a maximum area of 78 square feet, five total ground signs for a single business along Founders Circle, two building signs with a maximum area of 66.32 square feet, one building sign with a maximum area of 201.33 square feet, and three building signs at a maximum height of 40 feet.
2. The signs permitted by the variances shall be placed in the general locations illustrated on the approved site plan and shall be of a design, size, and height illustrated on the approved elevation drawings.
3. Ground signs shall not be permitted along the K-96 frontage.
4. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the granting of the variances, unless such time period is extended by the BZA.

5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER Where is the nearest structure to the east.

KNEBEL The nearest developed structure to the east, is this house, which is across the street.

FOSTER That house is angled?

KNEBEL It is pretty much across the street. That house is a rural style lot, probably about 2 acres, and it is actually setback and doesn't face the street, it angles. They were notified of the application.

MARKHAM This is no longer single-family zoning?

KNEBEL Within the last few years, the zoning of nearly the entire area has been changed to allow non-residential uses. The General Office zoning on the subject property was the last zoning to be granted, and it is basically a redevelopment and four houses that were removed. They are putting in a office use that backs up to the freeway.

FOSTER Where is the cemetery?

KNEBEL It is to the south.

FOSTER What is there where the word "Wichita" is?

KNEBEL That is part of their property, and I think that is a drainage reserve.

FOSTER What cemetery is that?

KNEBEL That is Lakeview cemetery. The cemetery has not grown that far back yet. The north end is currently undeveloped.

KIM SHANK, EXECUTIVE DIRECTOR WICHITA CLINIC, We have been in the community for 56 years, and this is an expansion project for us. We will have 120,000 square feet. I will be happy to answer any question.

FOSTER I am a customer of the Wichita Clinic and have been for a number of years. I can see the need for these signs, and the purpose for directional signs, because they have a lot of departments. Have we had cases similar to this before?

KNEBEL The last case we had similar to this was at Wesley Hospital, and they had an increase in the number of directional signage as well as some larger and higher building signs.

FOSTER I think this is a reasonable request.

MARKHAM moved GREENLEE seconded, That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the all four variances be granted subject to the conditions set out in the Secretary's report.

Item #4

HERB SHANER I have no report.

KNEBEL We will need to put on the next agenda the appointment of the Vice Chair with the vacancy created by Mr. Skelton being elected to City Council.

FOSTER moved MARKHAM seconded, to appoint John Rogers as Vice Chair to the Board of Zoning Appeals.

MOTION carried 4-0.

Meeting adjourned 2:09 p.m.